

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
)

ESWAR APPA NYAMATHI, M.D.)

File No. 06-2002-139765

Physician's and Surgeon's)
Certificate No. A 40919)
)

Respondent)
_____)

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 9, 2007.

IT IS SO ORDERED March 9, 2007.

MEDICAL BOARD OF CALIFORNIA

By: _____

Barbara Yaroslavsky
Chair, Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL,
Supervising Deputy Attorney General
3 ISMAEL A. CASTRO, State Bar No. 85452
Deputy Attorney General
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8 Attorneys for Complainant

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10 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 **ESWAR APPA NYAMATHI, M.D.**

14 17075 Devonshire Street, #106
Northridge, CA 91325

15 Physician and Surgeon's
16 Certificate No. A40919,

17 Respondent.

Case No. 06-2002-139765

OAH No. L2006020339

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to
19 the above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Dave Thornton (Complainant) is the Executive Director of the Medical
22 Board of California. He brought this action solely in his official capacity and is represented in
23 this matter by Bill Lockyer, Attorney General of the State of California, by Ismeal A. Castro,
24 Deputy Attorney General.

25 2. Respondent ESWAR APPA NYAMATHI, M.D. (Respondent) is
26 represented in this proceeding by attorney Michael Miretsky, Esq., whose address is McCurdy &
27 Leibel, 12925 Riverside Drive, Third Floor, Sherman Oaks, CA 91423. Tele No. (818) 380-
28 0123; Fax No. (818) 380-0124.

1 3. On or about June 18, 1984, the Medical Board of California issued
2 Physician and Surgeon Certificate Number A40919 to Eswar Appa Nyamathi, M.D.
3 (Respondent). The Certificate was in full force and effect at all times relevant to the charges
4 brought herein and will expire on April 30, 2008, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 06-2002-139765 was filed before the Division of Medical
7 Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and is
8 currently pending against Respondent. The Accusation and all other statutorily required
9 documents were properly served on Respondent on September 2, 2005. Respondent timely filed
10 his Notice of Defense contesting the Accusation. A copy of Accusation No. 06-2002-139765 is
11 attached as "Exhibit A" and incorporated herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 06-2002-139765. Respondent has
15 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
16 Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

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13. In consideration of the foregoing admissions and stipulations, the parties agree that the Division may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certificate No. A40919 issued to Respondent Eswar Appa Nyamathi, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months upon the following terms and conditions:

1. **CLINICAL TRAINING PROGRAM** - Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California, San Diego School of Medicine.

The Program shall consist of the Comprehensive Assessment Program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional education or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

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Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion. Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

2. ETHICS COURSE - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MEDICAL RECORDS KEEPING COURSE - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in medical records keeping, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

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Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. NOTIFICATION - Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

5. OBEY ALL LAWS - Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

6. QUARTERLY DECLARATIONS - Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. PROBATION UNIT COMPLIANCE - Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

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Respondent shall immediately inform the Division, or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

8. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE - Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

9. RESIDING OR PRACTICING OUT-OF-STATE - In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically canceled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be canceled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

1 10. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT -

2 In the event respondent resides in the State of California and for any reason
3 respondent stops practicing medicine in California, respondent shall notify the Division or its
4 designee in writing within 30 calendar days prior to the dates of non-practice and return to
5 practice. Any period of non-practice within California, as defined in this condition, will not
6 apply to the reduction of the probationary term and does not relieve respondent of the
7 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
8 any period of time exceeding 30 calendar days in which respondent is not engaging in any
9 activities defined in sections 2051 and 2052 of the Business and Professions Code.

10 All time spent in an intensive training program which has been approved by the
11 Division or its designee shall be considered time spent in the practice of medicine. For purposes
12 of this condition, non-practice due to a Board-ordered suspension or in compliance with any
13 other condition of probation, shall not be considered a period of non-practice.

14 Respondent's license shall be automatically cancelled if respondent resides in
15 California and for a total of two years, fails to engage in California in any of the activities
16 described in Business and Professions Code sections 2051 and 2052.

17 11. COMPLETION OF PROBATION - Respondent shall comply with all
18 financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar
19 days prior to the completion of probation. Upon successful completion of probation,
20 respondent's certificate shall be fully restored.

21 12. VIOLATION OF PROBATION - Failure to fully comply with any term or
22 condition of probation is a violation of probation. If respondent violates probation in any respect,
23 the Division, after giving respondent notice and the opportunity to be heard, may revoke
24 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
25 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,
26 the Division shall have continuing jurisdiction until the matter is final, and the period of
27 probation shall be extended until the matter is final.

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1 13. LICENSE SURRENDER - Following the effective date of this Decision, if
2 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
3 the terms and conditions of probation, respondent may request the voluntary surrender of
4 respondent's license. The Division reserves the right to evaluate respondent's request and to
5 exercise its discretion whether or not to grant the request, or to take any other action deemed
6 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
7 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
8 Division or its designee and respondent shall no longer practice medicine. Respondent will no
9 longer be subject to the terms and conditions of probation and the surrender of respondent's
10 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the
11 application shall be treated as a petition for reinstatement of a revoked certificate.

12 14. PROBATION MONITORING COSTS - Respondent shall pay the costs
13 associated with probation monitoring each and every year of probation, as designated by the
14 Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical
15 Board of California and delivered to the Division or its designee no later than January 31 of each
16 calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of
17 probation.

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ACCEPTANCE

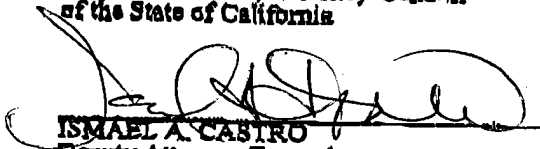
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael Miretsky. I understand the stipulation and the effect it will have on my Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: NOV-3-06
ESWAR APPA NYAMATHI, M.D.
Respondent

I concur with this stipulated settlement.

DATED: 11/3/06
MICHAEL MIRETSKY
Attorney for Respondent**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division.

DATED: 11-3-06BILL LOCKYER, Attorney General
of the State of California
ISMAEL A. CASTRO
Deputy Attorney General

Attorneys for Complainant

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of the State of California
2 ADRIAN K. PANTON, Supervising
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7 Attorneys for Complainant

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**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **ESWAR APPA NYAMATHI, M.D.**
15 17075 Devonshire Street, #106
Northridge, CA 91325

16 Physician and Surgeon
Certificate No. A40919

Respondent.

Case No. 06-2002-139765

ACCUSATION

Complainant alleges:

PARTIES

1. David T. Thornton (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California (Board), California Department of Consumer Affairs.
2. On or about June 18, 1984, the Medical Board of California issued Physician and Surgeon Certificate Number A40919 to Eswar Appa Nyamathi, M.D. (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2006, unless renewed.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 2, 2005
BY Celine Nijmeh ANALYST

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3. This Accusation is brought before the Board's Division of Medical Quality under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. **Section 2227** of the Code provides:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. **Section 2234** of the Code provides:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,
3 the Medical Practice Act].

4 "(b) Gross negligence.

5 "(c) Repeated negligent acts. To be repeated, there must be two or more
6 negligent acts or omissions. An initial negligent act or omission followed by a separate
7 and distinct departure from the applicable standard of care shall constitute repeated
8 negligent acts.

9 "(1) An initial negligent diagnosis followed by an act or omission medically
10 appropriate for that negligent diagnosis of the patient shall constitute a single
11 negligent act.

12 "(2) When the standard of care requires a change in the diagnosis, act, or
13 omission that constitutes the negligent act described in paragraph (1), including,
14 but not limited to, a reevaluation of the diagnosis or a change in treatment, and the
15 licensee's conduct departs from the applicable standard of care, each departure
16 constitutes a separate and distinct breach of the standard of care.

17 "(d) Incompetence.

18 "(e) The commission of any act involving dishonesty or corruption which is
19 substantially related to the qualifications, functions, or duties of a physician and surgeon.

20 6. **Section 2240 (b)** of the Code states, in pertinent part:

21 "(b) Any physician and surgeon who performs a scheduled medical
22 procedure outside of a general acute care hospital, as defined in subdivision (a) of
23 Section 1250 of the Health and Safety Code, that results in the transfer to a
24 hospital or emergency center for medical treatment for a period exceeding 24
25 hours, of any patient on whom that medical treatment was performed by the
26 physician and surgeon, or by a person acting under the physician and surgeon's
27 orders or supervision, shall report, in writing, on a form prescribed by the board
28 that occurrence, within 15 days after the occurrence.

1
2 (f) The failure to comply with this section constitutes unprofessional
3 conduct."

4 7. **Section 2266** of the Code states:

5 "The failure of a physician and surgeon to maintain adequate and accurate records
6 relating to the provision of services to their patients constitutes unprofessional conduct."

7 8. **Section 2261** of the Code states:

8 "Knowingly making or signing any certificate or other document directly or
9 indirectly related to the practice of medicine or podiatry which falsely represents
10 the existence or nonexistence of a state of facts, constitutes unprofessional
11 conduct."

12 **COST RECOVERY**

13 9. **Section 125.3** of the Code provides, in pertinent part, that the Division
14 may request the administrative law judge to direct a licensee found to have committed a
15 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
16 investigation and enforcement of the case.

17 **MEDICAL TERMS**

18 10. Hyperhidrosis-Excessive or profuse sweating.

19 11. Thoracic Sympathectomy-Excision of a segment of a sympathetic nerve or
20 of one or more of the sympathetic ganglia in the thorax.

21 12. Insufflate-To deliver air or gas under pressure to a cavity or chamber of
22 the body.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(PATIENT I. C.²)**

25 **(Gross Negligence)**

26 _____
27 2. In this Accusation, the patient will be referred to by initials. The full name of the
28 patient will be disclosed to respondent when discovery is provided pursuant to Government
 Code section 11507.6.

1 13. On or about May 20, 2002, at the Wilbur Surgery Center, respondent
2 performed a thoracoscopic thoracic sympathectomy operation on a 22 year-old female, I. C., for
3 the treatment of hyperhidrosis. Her history of present illness and past medical history were taken
4 by respondent on that date and no significant medical problems were revealed. At 12:25 hours,
5 anesthesia was begun and the surgery was commenced at 13:10 hours. Thoracoscopy trocars
6 were placed and I.C.'s right chest was insufflated with carbon dioxide to a pressure limit of
7 22mm of mercury. After completion of the right thoracic sympathectomy, the trocars were
8 placed for the left thoracic sympathectomy. Approximately mid-way through the procedure, I.C.
9 experienced sudden bradycardia - a "Code Blue" event - that was treated chemically and was
10 followed by tachydysrhythmia, electrical defibrillation, and normal sinus rhythm. I.C. was
11 severely hypothermic. During the operation, the anesthesiologist repeatedly asked respondent to
12 stop the procedure because I.C.'s vital signs were unstable. Respondent failed to stop the
13 procedure and stated that he just needed a few minutes more and continued with the procedure.
14 No mention of I.C.'s bradycardia, ventricular tachycardia, or attempts at electrical defibrillation
15 are noted in respondent's unsigned operative report which was dictated on May 20, 2002. After
16 this code blue event, I.C. was not immediately transferred to a hospital.

17 14. The surgery continued without anesthesia after the cardiac arrest for
18 another 40 minutes and concluded at 14:20 hours. I.C. was then extubated and taken to the
19 Clinic's recovery room ("Post Anesthetic Care Unit" or "PACU") at 14:45 hours. In the PACU,
20 I.C. remained "unresponsive to tactile stimuli," with stable vital signs on oxygen. Respondent
21 sent I.C. to the recovery room as if she was going to be discharged home on that date in spite of
22 the fact that I.C. had arrested and required the use of the defibrillator. Respondent did not order
23 that I.C. be transferred to a hospital even though she had suffered a cardiac arrest and was not
24 fully resuscitated after the surgery.

25 15. At 17:25 hours, the anesthesiologist directed the nurse to notify respondent
26 about I.C.'s condition. At that time, respondent ordered I.C.'s transfer to the hospital by
27 ambulance. I.C. was not transferred as directed.

28 16. At 18:34 hours respondent again ordered that I.C. be transported to a

1 hospital. I.C. was again not transferred. At about 18:36 hours, the anesthesiologist informed the
2 nurse in the PACU that the Clinic's director, Dr. James Shamloo, wanted to see I.C. before she
3 was to be transferred to a hospital. Dr. Shamloo was not present at the Clinic at the time. Dr.
4 Shamloo arrived at the Clinic at 20:20 hours. At 20:47 hours "911" was called and I.C. was
5 transported by ambulance to the Tarzana Medical Center at 20.51 hours.

6 17. At the Tarzana Medical Center, I.C.'s condition did not change. I.C. had
7 EKG, ECG, head CAT scan and laboratories. I.C.'s CAT scan and neurologic exams did not
8 show focal findings, and she was in a coma. She did not recover and remains in a vegetative
9 state. Respondent never notified the Medical Board of California that I.C. had been transferred
10 to Tarzana Medical Center.

11 18. Respondent's treatment of I.C. included the following acts and/or
12 omissions which constitute extreme departures from the standard of care:

13 A. Respondent continued with the procedure even though I.C.'s vital signs were
14 unstable and the anesthesiologist asked respondent repeatedly to stop the operation.
15 Respondent's act of continuing with the operation when the anesthesiologist requested him to
16 stop constitutes an extreme departure from the standard of practice;

17 B. Respondent proceeded with an elective operation for another 40 minutes after
18 I.C. developed ventricular tachycardia and ventricular fibrillation intra-operatively. The standard
19 of care requires that surgery terminate as soon as possible after a cardiac arrest and respondent
20 failed to do so. Respondent's failure to terminate the surgery was an extreme departure from the
21 standard of practice.

22 C. Respondent's failure to chart or note I.C.'s bradycardia, tachycardia, and
23 defibrillation in his operative report constitutes an extreme departure from the standard of
24 practice.

25 D. Post-operatively, I.C. was never fully resuscitated and this was not charted or
26 noted by respondent's post-operative record. Respondent's failure to chart that I.C. was never
27 fully resuscitated was an extreme departure from the standard of practice.

28 E. Respondent failed to transfer I.C. to a full service hospital for evaluation after

1 I.C. had suffered a cardiac arrest during the procedure and was never fully resuscitated after the
2 procedure. Respondent's failure to transfer I.C. under these circumstances constitutes an extreme
3 departure from the standard of practice.

4 F. After this otherwise healthy 22 year old patient's cardiac arrest, respondent did
5 not address or evaluate after the surgery why this may have occurred. Respondent's omission in
6 this regard is an extreme departure from the standard of practice.

7 G. After I.C. had a cardiac arrest during the surgery and after I.C. was never fully
8 resuscitated, respondent left the surgical center and failed to monitor I.C. until she was stabilized.
9 Respondent's failure to adequately monitor I.C.'s condition post-operatively constitutes an
10 extreme departure from the standard of practice.

11 19. Respondent's acts and/or omissions as set forth in paragraphs 13 through
12 18, inclusive, whether proven individually, jointly, or in any combination thereof, constitute
13 gross negligence within the meaning of Code section 2234(b).

14 **SECOND CAUSE FOR DISCIPLINE**

15 **PATIENT I.C.**

16 **(Repeated Negligent Acts)**

17 20. Respondent is subject to disciplinary action under section 2234 (c) of the
18 Code in that Respondent's care and treatment of patient I. C. constituted repeated negligent acts.
19 The circumstances are as follows:

20 21. The allegations of paragraphs 13 through 18, inclusive, are incorporated
21 herein by reference as if fully set forth.

22 22. Respondent insufflated the right chest with carbon dioxide to a pressure
23 limit of 22 mm Hg. It is widely documented that insufflation of carbon dioxide to pressures of
24 over 15mm HG cause significant hemodynamic compromise. The consensus recommendation is
25 to limit the pressure of carbon dioxide in the chest to 15mm HG or less. Respondent departed
26 from the standard of practice when he insufflated the right chest to a pressure limit of 22 mm Hg.

27 23. In a patient who is comatose and unable to protect their airway, the
28 standard of practice is to provide airway protection, usually in the form of endotracheal

1 intubation. Respondent's failure to provide airway protection in this case constitutes a departure
2 from the standard of practice.

3 24. Respondent's acts and/or omissions as set forth in paragraphs 21 through
4 23, inclusive, whether proven jointly or in any combination thereof, constitutes repeated
5 negligent acts pursuant to section 22349 (c) of the Code. Therefore, cause for discipline exists.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(PATIENT I.C.)**

8 **(Inadequate Records)**

9 25. Respondent is subject to disciplinary action under section 2266 of the
10 Code in that respondent failed to maintain adequate records of his care and treatment of patient
11 I.C. The circumstances are as follows:

12 26. The allegations of paragraphs 13 through 18, inclusive, are incorporated
13 herein by reference as if fully set forth.

14 27. Respondent's conduct as set forth in paragraph 26, above, constitutes the
15 maintenance of inadequate records within the meaning of Code section 2266.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(PATIENT I.C.)**

18 **(Knowingly Making a False Representation)**

19 28. Respondent is subject to disciplinary action under section 2261 of the
20 Code in that respondent knowingly made false statements in the medical records of I.C. The
21 circumstances are as follows:

22 29. The allegations of paragraphs 13 through 18, inclusive, are incorporated
23 herein by reference as if fully set forth.

24 30. Respondent's conduct as set forth in paragraph 29 above constitutes
25 knowingly making false statements in the medical records of I.C. in violation of Code section
26 2261.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonest and Corrupt Acts)**

3 31. Respondent is subject to disciplinary action under section 2234 (e) of the
4 Code in that respondent committed dishonest and/or corrupt acts that are substantially related to
5 his practice of medicine. The circumstances are as follows:

6 32. The allegations of paragraphs 13 through 18, inclusive, are incorporated
7 herein by reference as if fully set forth.

8 33. During the medical board interview which took place on February 10,
9 2004, respondent stated that I.C. coded when he was out of the operating room and preparing his
10 operative report. The anesthesiologist's record, however, noted that the cardiac arrest occurred
11 during the surgery and not afterwards. The surgical technician, J.V., present during the surgery,
12 confirmed that I.C. coded during the procedure and while respondent was present.

13 34. During the medical board interview, respondent stated to the medical board
14 investigator that when he started on the left side there was a blood pressure problem and he
15 stopped working and withdrew his instrument to allow the anesthesiologist to get control of the
16 situation as he requested to do. However, the anesthesiologist and the surgical technician, J.V.,
17 present during the surgery state that respondent failed to immediately stop the procedure when
18 requested to do so by the anesthesiologist and continued working on the patient.

19 35. Respondents acts and/or omissions as set forth in paragraphs 32 through 34,
20 inclusive, above constitutes dishonest and corrupt acts in violation of section 2234(e) of the
21 Code.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(PATIENT I.C.)**

24 **(Failure to Notify Board of Patient's Transfer to a Hospital)**

25 36. Respondent is subject to disciplinary action under section 2240(b) of the
26 Code in that respondent failed to notify the Medical Board of California of a patient's transfer to
27 a hospital. The circumstances are as follows:

28 37. The allegations of paragraphs 13 through 18, inclusive, are incorporated

1 herein by reference as if fully set forth.

2 38. Respondent failed to notify the Medical Board of California within fifteen
3 (15) days of I.C.'s transfer to the Tarzana Medical Center, as noted above, or at any time at all as
4 required by Code section 2240(b).

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(PATIENT I.C.)**

7 **(Unprofessional Conduct)**

8 39. Respondent is subject to disciplinary action under section 2234 of the
9 Code in that respondent's care and treatment of patient I.C. constituted unprofessional conduct.
10 The circumstances are as follows:

11 40. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Causes
12 of action are incorporated by reference herein as if fully set forth.

13 41. Respondent's conduct as set forth in paragraph 40, above, constitutes
14 unprofessional conduct within the meaning of Code section 2234.

15 **PRAYER**


16 **WHEREFORE**, Complainant requests that a hearing be held on the matters
17 herein alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 18 1. Revoking or suspending Certificate Number A40919 issued to
19 respondent;
- 20 2. Revoking, suspending or denying approval of respondent to supervise
21 physician's assistants, pursuant to section 3527 of the Code;
- 22 3. Ordering respondent to pay the Division of Medical Quality the reasonable
23 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
24 probation monitoring; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: September 2, 2005



DAVID T. THORNTON
Executive Director
Medical Board of California
State of California, Complainant

Nyamathi.Acc